

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

ASSOCIATION OF AMERICAN
UNIVERSITIES, et al.,

Plaintiffs,

v.

DEPARTMENT OF ENERGY, et al.,

Defendants.

Case No. 25-cv-10912-ADB

DECLARATION OF BERTA SCHREIBER

I, Berta Schreiber, hereby declare as follows:

1. I am the Director of the Office of Acquisition Management within the Office of Management and the Senior Procurement Executive at the United States Department of Energy (DOE). I have held this position since October 1, 2023. In this position, I am responsible for overseeing DOE's acquisition and financial assistance policies, regulations and oversight programs. As the Senior Procurement Executive, I delegate authority to thirteen Heads of Contracting Activities to enter into contracts, financial assistance agreements, and other transactions agreements. I have DOE-wide responsibility and authority to provide overall direction of the Department's procurement system which includes acquisition and financial assistance. My authority does not include the National Nuclear Security Administration, the Federal Energy Regulatory Commission, or the Bonneville Power Administration.

2. Prior to assuming my current role, I served as both the Deputy Director for the Office of Acquisition Management since August 2022 and, prior to that, as the Director of the

Office of Procurement and Financial Assistance Policy (previously the Office of Policy). I was the Director of the Office of Policy within the Office of Acquisition Management since November 2011.

3. Through my official duties, I have become familiar with the DOE Policy Flash. A DOE Policy Flash is one type of communication tool used by the Office of Acquisition Management to disseminate acquisition or financial assistance-related information, guidance, and updates to procurement and financial assistance personnel. Policy Flashes can interpret existing authority, provide internal instructions or guidance, or provide notice of DOE's intent to take a certain action.

4. In order to promote transparency, Policy Flashes are viewable by the public on the DOE webpage, which describes the Policy Flash as follows:

Policy Flashes are issued by the Office of Acquisition Management. Policy Flashes transmit information and items of interest to the DOE acquisition community. A Policy Flash itself is not a statement of policy and should not be referenced as such.

Available at <https://www.energy.gov/management/policy-flashes> (last visited April 22, 2025).

5. Attached as Exhibit A is a true and correct copy of Policy Flash PF 2025-22, "Adjusting Department of Energy Grant Policy for Institutions of Higher Education," which I issued on April 11, 2025 by publication on the webpage:

<https://www.energy.gov/management/policy-flashes>.

6. I participated in and am familiar with the process by which Policy Flash PF 2025-22, "Adjusting Department of Energy Grant Policy for Institutions of Higher Education" was developed. PF 2025-22 was not intended to be a binding or final agency action. It was an announcement of DOE's intent to enter into negotiations with a class of awardees (as specifically noted in the Policy Flash, initially this would be Institutions of Higher Education) with an aim to

arrive at acceptance of a 15% indirect cost rate. Subsequent to negotiations, the Department would take action to modify a particular grant agreement to stipulate the newly negotiated terms. If agreement could not be reached, the Department would have the option to terminate the award.

7. As stated, a Policy Flash is merely a communication mechanism; it is not a regulation and, as stated on the Policy Flash webpage, it is not even a statement of policy. Policy Flashes can be modified or cancelled by DOE at any time; there is no public comment process related to them; and they do not have the force and effect of law. While a Policy Flash is sometimes used to describe future plans of the Office of Acquisition Management that might have legal consequences when implemented by a future action, issuance of a Policy Flash itself does not have any legal consequence or any direct impact on an existing grant award or grantee.

8. Attached as Exhibit B is a true and accurate copy of a statement issued by the Department of Energy on April 11, 2025, “Department of Energy Overhauls Policy for College and University Research, Saving \$405 Million Annually for American Taxpayers”.

9. Attached as Exhibit C is a true and correct copy of an Assistance Agreement for Award No. DE-FE0032481 that memorializes a final grant from DOE to Washington University in St. Louis, effective May 1, 2024, for research related to “Novel Supercritical Fluid Extraction/Enrichment of Rare Earth Elements Directly from Solid Coal-Based Resources.” Upon information and belief, Washington University in St. Louis is a member of Plaintiff Association of American Universities.

10. Attached as Exhibit D is a true and correct copy of the Negotiated Indirect Cost Rate Agreement (NICRA) provided by Washington University in St. Louis in association with Award No. DE-FE0032481. The document contains the following term:

If any Federal contract, grant or other agreement is reimbursing indirect costs by a means other than the approved rate(s) in this Agreement, the organization should

(1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of indirect costs allocable to these programs.

11. Attached as Exhibit E is a true and correct copy of the “SPECIAL TERMS AND CONDITIONS FOR USE IN MOST GRANTS AND COOPERATIVE AGREEMENTS” attached to Award No. DE-FE0032481. The document contains, in part, the following term:

This assistance agreement consists of the Assistance Agreement Cover Page and Award Terms and Conditions, plus the following:

- a. Special terms and conditions.
- b. Attachments:

| Attachment No. | Title |
|-------------------|---|
| 1 | Intellectual Property Provisions |
| 2 | Statement of Project Objectives |
| 3 | Federal Assistance Reporting Checklist and Instructions |
| 4 | Budget Pages |
| 5 | Data Management Plan |

- c. Applicable program regulations at <http://www.eCFR.gov>.
- d. DOE Assistance Regulations, 2 CFR part 200 as supplemented by 2 CFR part 910 at <http://www.eCFR.gov>.
- e. Research Terms and Conditions and the DOE Agency Specific Requirements at <http://www.nsf.gov/bfa/dias/policy rtc/index.jsp>
- f. Application/proposal as approved by DOE.
- g. National Policy Requirements to Be Incorporated as Award Terms in effect on date of award at <https://www.nsf.gov/awards/managing/rtc.jsp>.

12. Attached as Exhibit F is a true and correct copy of an Assistance Agreement for Award No. DE-SC0010113 that memorializes a final grant from DOE to The University of Iowa, effective April 1, 2023, for “High Energy Experimental and Theoretical Physics Research.” Upon information and belief, The University of Iowa is a member of Plaintiff Association of American Universities.

13. Attached as Exhibit G is a true and correct copy of a Negotiated Indirect Cost Rate Agreement (NICRA) with cover letter provided by The University of Iowa in association with Award No. DE-SC0010113. The document contains the following term:

If any Federal contract, grant or other agreement is reimbursing indirect costs by a means other than the approved rate(s) in this Agreement, the organization should (1) credit such costs to the affected programs, and (2) apply the approved rate(s) to the appropriate base to identify the proper amount of indirect costs allocable to these programs.

14. Attached as Exhibit H is a true and correct copy of the “SPECIAL TERMS AND CONDITIONS” attached to Award No. DE-SC0010113. The document contains, in part, the following term:

This award/agreement consists of the Assistance Agreement cover page, plus the following:

- a. Special terms and conditions.
- b. Attachments:

| Attachment No. | Title |
|-------------------|---|
| 1 | Intellectual Property Provisions and Patent Responsibility Requirements |
| 2 | Federal Assistance Reporting Checklist and Instructions |
| 3 | Budget Pages |
| 4 | If the award is for research, the Federal-Wide Research Terms and Conditions and DOE Agency Specific Requirements, available at https://www.nsf.gov/awards/managing/rtr.jsp |

- c. Applicable program regulations, 10 CFR 605 at <http://www.eCFR.gov>.
- d. DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- e. Application/proposal as approved by DOE.
- f. National Policy Requirements to Be Incorporated as Award Terms in effect on date of award at <https://www.nsf.gov/awards/managing/rtr.jsp>.

15. Attached as Exhibit I is a true and correct copy of an April 14, 2025 letter from Michael Neff, the Contracting Officer for the DOE Office of Science, to The University of Iowa in regards to a number of federal grants, including Award No. DE-SC0010113.

I HEREBY DECLARE TO THE BEST OF MY KNOWLEDGE AND BELIEF, UNDER PENALTY OF PERJURY under the laws of the United States of America, that the foregoing is true and correct.

EXECUTED this 22nd day of April, 2025 at Washington, DC.

BERTA
SCHREIBER

Digitally signed by BERTA
SCHREIBER
Date: 2025.04.22 14:16:11
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Berta Schreiber